

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-216644**DATE:** November 26, 1984**MATTER OF:** Communications Specialists Company, Inc.**DIGEST:**

Protest is dismissed: (1) where protester, after protesting to GAO, files suit seeking preliminary injunction pending GAO decision, and (2) where court has denied a temporary restraining order without prejudice to request for preliminary injunction, since suit is still pending before court and court has not expressed any interest in receiving a GAO decision.

Communications Specialists Company, Inc. (CSC), protests the consideration of a bid lower than CSC's bid because CSC's bid was the apparent low bid at the August 28, 1984, bid opening of invitation for bids No. M67001-84-B-0022 issued by the Marine Corps, Camp Lejeune, North Carolina. CSC states that the lower bid was discovered on a government employee's desk on the day of bid opening and that, at the time of its discovery, it was not in a sealed envelope or package. CSC claims that there is no record of what happened to the bid after it was placed on the desk.

CSC initially protested to the Marine Corps, which awarded the contract on October 1, 1984, notwithstanding the protest. CSC then protested to GAO. CSC also filed suit in the United States District Court for the Eastern District of North Carolina (Court) (Docket No. 84-92-CIV-7) on October 2, 1984, on essentially the same grounds as asserted in its protest. CSC sought a preliminary injunction pending our decision on the protest. By order dated October 15, 1984, the Court denied an application for a temporary restraining order without prejudice to further consideration of the CSC request for a preliminary injunction.

The suit is still pending before the Court, and the Court's decision would take precedence over a GAO decision on the protest. Nartron Corp. et al., 53 Comp. Gen. 730 (1974), 74-1 C.P.D. ¶ 154. Once a suit is initiated, what is significant from our perspective is not the

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protester/plaintiff's intentions, but the Court's. See CSA Reporting Corporation, B-196545, Dec. 21, 1979, 79-2 C.P.D. ¶ 432. It is our policy not to render a decision where the matter is being litigated in court unless the court requests, expects or otherwise expresses an interest in our decision. 4 C.F.R. § 21.10 (1984). We do not consider the denial of a temporary restraining order, without prejudice to a consideration of a request for a preliminary injunction pending a GAO decision, as such an expression of interest.

We dismiss the protest.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel